

**Union Calendar No. 10**

104TH CONGRESS  
1ST SESSION

**H.R. 729**

**[Report No. 104-23]**

**A BILL**

To control crime by a more effective death penalty.

FEBRUARY 8, 1995

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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### IN THE HOUSE OF REPRESENTATIVES

JANUARY 30, 1995

Mr. McCOLLUM introduced the following bill; which was referred to the  
Committee on the Judiciary

FEBRUARY 8, 1995

Additional sponsors: Mr. BRYANT of Tennessee, Mr. BLILEY, Mr. ENGLISH  
of Pennsylvania, Mr. WELLER, and Mr. ROYCE

FEBRUARY 8, 1995

Reported with an amendment, committed to the Committee of the Whole  
House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on January 30, 1995]

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## A BILL

To control crime by a more effective death penalty.

1       *Be it enacted by the Senate and House of Representa-*  
2   *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) *SHORT TITLE.*—This Act may be cited as the “Ef-  
3 fective Death Penalty Act of 1995”.

4 (b) *TABLE OF CONTENTS.*—The table of contents is as  
5 follows:

*Sec. 1. Short title; table of contents.*

*TITLE I—HABEAS CORPUS REFORM*

*SUBTITLE A—POST CONVICTION PETITIONS: GENERAL HABEAS CORPUS  
REFORM*

*Sec. 101. Period of limitation for filing writ of habeas corpus following final  
judgment of a State court.*

*Sec. 102. Authority of appellate judges to issue certificates of probable cause for  
appeal in habeas corpus and Federal collateral relief proceed-  
ings.*

*Sec. 103. Conforming amendment to the rules of appellate procedure.*

*Sec. 104. Effect of failure to exhaust State remedies.*

*Sec. 105. Period of limitation for Federal prisoners filing for collateral remedy.*

*SUBTITLE B—SPECIAL PROCEDURES FOR COLLATERAL PROCEEDINGS IN  
CAPITAL CASES*

*Sec. 111. Death penalty litigation procedures.*

*SUBTITLE C—FUNDING FOR LITIGATION OF FEDERAL HABEAS CORPUS  
PETITIONS IN CAPITAL CASES*

*Sec. 121. Funding for death penalty prosecutions.*

*TITLE II—FEDERAL DEATH PENALTY PROCEDURES REFORM*

*Sec. 201. Federal death penalty procedures reform.*

***TITLE I—EFFECTIVE DEATH  
PENALTY***

***Subtitle A—Post Conviction Petitions: General Habeas Corpus Reform***

***SEC. 101. PERIOD OF LIMITATION FOR FILING WRIT OF HABEAS CORPUS FOLLOWING FINAL JUDGMENT OF A STATE COURT.***

*Section 2244 of title 28, United States Code, is amended by adding at the end the following:*

*“(d)(1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of the following times:*

*“(A) The time at which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review.*

*“(B) The time at which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, where the applicant was prevented from filing by such State action.*

*“(C) The time at which the Federal right asserted was initially recognized by the Supreme Court,*

1        *where the right has been newly recognized by the*  
 2        *Court and is retroactively applicable.*

3            *“(D) The time at which the factual predicate of*  
 4        *the claim or claims presented could have been discov-*  
 5        *ered through the exercise of reasonable diligence.*

6            *“(2) Time that passes during the pendency of a prop-*  
 7        *erly filed application for State review with respect to the*  
 8        *pertinent judgment or claim shall not be counted toward*  
 9        *any period of limitation under this subsection.”.*

10    ***SEC. 102. AUTHORITY OF APPELLATE JUDGES TO ISSUE***  
 11                    ***CERTIFICATES OF PROBABLE CAUSE FOR AP-***  
 12                    ***PEAL IN HABEAS CORPUS AND FEDERAL COL-***  
 13                    ***LATERAL RELIEF PROCEEDINGS.***

14        *Section 2253 of title 28, United States Code, is amend-*  
 15        *ed to read as follows:*

16    ***“§ 2253. Appeal***

17            *“(a) In a habeas corpus proceeding or a proceeding*  
 18        *under section 2255 of this title before a circuit or district*  
 19        *judge, the final order shall be subject to review, on appeal,*  
 20        *by the court of appeals for the circuit where the proceeding*  
 21        *is had.*

22            *“(b) There shall be no right of appeal from such an*  
 23        *order in a proceeding to test the validity of a warrant to*  
 24        *remove, to another district or place for commitment or trial,*  
 25        *a person charged with a criminal offense against the United*

1 *States, or to test the validity of his detention pending re-*  
 2 *moval proceedings.*

3       “(c) *An appeal may not be taken to the court of ap-*  
 4 *peals from the final order in a habeas corpus proceeding*  
 5 *where the detention complained of arises out of process is-*  
 6 *sued by a State court, or from the final order in a proceed-*  
 7 *ing under section 2255 of this title, unless a circuit justice*  
 8 *or judge issues a certificate of probable cause. A certificate*  
 9 *of probable cause may only issue if the petitioner has made*  
 10 *a substantial showing of the denial of a Federal right. The*  
 11 *certificate of probable cause must indicate which specific*  
 12 *issue or issues satisfy this standard.”.*

13 ***SEC. 103. CONFORMING AMENDMENT TO THE RULES OF AP-***  
 14 ***PELLATE PROCEDURE.***

15       *Federal Rule of Appellate Procedure 22 is amended to*  
 16 *read as follows:*

17                               “*RULE 22*

18               “*HABEAS CORPUS AND SECTION 2255 PROCEEDINGS*

19               “(a) *APPLICATION FOR AN ORIGINAL WRIT OF HA-*  
 20 *BEAS CORPUS.—An application for a writ of habeas corpus*  
 21 *shall be made to the appropriate district court. If applica-*  
 22 *tion is made to a circuit judge, the application will ordi-*  
 23 *narily be transferred to the appropriate district court. If*  
 24 *an application is made to or transferred to the district*  
 25 *court and denied, renewal of the application before a circuit*

1 judge is not favored; the proper remedy is by appeal to the  
2 court of appeals from the order of the district court denying  
3 the writ.

4 “(b) *NECESSITY OF CERTIFICATE OF PROBABLE*  
5 *CAUSE FOR APPEAL.*—In a habeas corpus proceeding in  
6 which the detention complained of arises out of process is-  
7 sued by a State court, and in a motion proceeding pursuant  
8 to section 2255 of title 28, United States Code, an appeal  
9 by the applicant or movant may not proceed unless a cir-  
10 cuit judge issues a certificate of probable cause. If a request  
11 for a certificate of probable cause is addressed to the court  
12 of appeals, it shall be deemed addressed to the judges thereof  
13 and shall be considered by a circuit judge or judges as the  
14 court deems appropriate. If no express request for a certifi-  
15 cate is filed, the notice of appeal shall be deemed to con-  
16 stitute a request addressed to the judges of the court of ap-  
17 peals. If an appeal is taken by a State or the Government  
18 or its representative, a certificate of probable cause is not  
19 required.”.

20 **SEC. 104. EFFECT OF FAILURE TO EXHAUST STATE REM-**  
21 **EDIES.**

22 Section 2254(b) of title 28, United States Code, is  
23 amended to read as follows:

24 “(b) An application for a writ of habeas corpus in be-  
25 half of a person in custody pursuant to the judgment of

1 a State court shall not be granted unless it appears that  
 2 the applicant has exhausted the remedies available in the  
 3 courts of the State, or that there is either an absence of  
 4 available State corrective process or the existence of cir-  
 5 cumstances rendering such process ineffective to protect the  
 6 rights of the applicant. An application may be denied on  
 7 the merits notwithstanding the failure of the applicant to  
 8 exhaust the remedies available in the courts of the State.  
 9 A State shall not be deemed to have waived the exhaustion  
 10 requirement, or be estopped from reliance upon the require-  
 11 ment unless through its counsel it waives the requirement  
 12 expressly.”.

13 **SEC. 105. PERIOD OF LIMITATION FOR FEDERAL PRIS-**  
 14 **ONERS FILING FOR COLLATERAL REMEDY.**

15 Section 2255 of title 28, United States Code, is amend-  
 16 ed by striking the second paragraph and the penultimate  
 17 paragraph thereof, and by adding at the end the following  
 18 new paragraphs:

19 “A two-year period of limitation shall apply to a mo-  
 20 tion under this section. The limitation period shall run  
 21 from the latest of the following times:

22 “(1) The time at which the judgment of convic-  
 23 tion becomes final.

24 “(2) The time at which the impediment to mak-  
 25 ing a motion created by governmental action in viola-



1        *tion of the Constitution or laws of the United States*  
 2        *is removed, where the movant was prevented from*  
 3        *making a motion by such governmental action.*

4            “(3) *The time at which the right asserted was*  
 5        *initially recognized by the Supreme Court, where the*  
 6        *right has been newly recognized by the Court and is*  
 7        *retroactively applicable.*

8            “(4) *The time at which the factual predicate of*  
 9        *the claim or claims presented could have been discov-*  
 10       *ered through the exercise of reasonable diligence.”.*

11        ***Subtitle B—Special Procedures for***  
 12        ***Collateral Proceedings in Cap-***  
 13        ***ital Cases***

14        ***SEC. 111. DEATH PENALTY LITIGATION PROCEDURES.***

15        (a) *IN GENERAL.*—Title 28, United States Code, is  
 16        *amended by inserting the following new chapter after chap-*  
 17        *ter 153:*

18        ***“CHAPTER 154—SPECIAL HABEAS CORPUS***  
 19        ***PROCEDURES IN CAPITAL CASES***

“Sec.

“2256. *Prisoners in State custody subject to capital sentence; appointment of counsel; requirement of rule of court or statute; procedures for appointment.*

“2257. *Mandatory stay of execution; duration; limits on stays of execution; successive petitions.*

“2258. *Filing of habeas corpus petition; time requirements; tolling rules.*

“2259. *Scope of Federal review; district court adjudications.*

“2260. *Certificate of probable cause inapplicable.*

“2261. *Application to State unitary review procedures.*

“2262. *Limitation periods for determining petitions.*

“2263. *Rule of construction.*

1   **“§2256. Prisoners in State custody subject to capital**  
2                   **sentence; appointment of counsel; require-**  
3                   **ment of rule of court or statute; proce-**  
4                   **dures for appointment**

5           “(a) *This chapter shall apply to cases arising under*  
6 *section 2254 brought by prisoners in State custody who are*  
7 *subject to a capital sentence. It shall apply only if the provi-*  
8 *sions of subsections (b) and (c) are satisfied.*

9           “(b) *This chapter is applicable if a State establishes*  
10 *by rule of its court of last resort or by statute a mechanism*  
11 *for the appointment, compensation and payment of reason-*  
12 *able litigation expenses of competent counsel in State*  
13 *postconviction proceedings brought by indigent prisoners*  
14 *whose capital convictions and sentences have been upheld*  
15 *on direct appeal to the court of last resort in the State or*  
16 *have otherwise become final for State law purposes. The rule*  
17 *of court or statute must provide standards of competency*  
18 *for the appointment of such counsel.*

19           “(c) *Any mechanism for the appointment, compensa-*  
20 *tion and reimbursement of counsel as provided in subsection*  
21 *(b) must offer counsel to all State prisoners under capital*  
22 *sentence and must provide for the entry of an order by a*  
23 *court of record: (1) appointing one or more counsel to rep-*  
24 *resent the prisoner upon a finding that the prisoner is indi-*  
25 *gent and accepted the offer or is unable competently to de-*  
26 *cide whether to accept or reject the offer; (2) finding, after*

1 *a hearing if necessary, that the prisoner rejected the offer*  
2 *of counsel and made the decision with an understanding*  
3 *of its legal consequences; or (3) denying the appointment*  
4 *of counsel upon a finding that the prisoner is not indigent.*

5       “(d) No counsel appointed pursuant to subsections (b)  
6 and (c) to represent a State prisoner under capital sentence  
7 shall have previously represented the prisoner at trial or  
8 on direct appeal in the case for which the appointment is  
9 made unless the prisoner and counsel expressly request con-  
10 tinued representation.

11       “(e) The ineffectiveness or incompetence of counsel dur-  
12 ing State or Federal collateral postconviction proceedings  
13 in a capital case shall not be a ground for relief in a pro-  
14 ceeding arising under section 2254 of this chapter. This  
15 limitation shall not preclude the appointment of different  
16 counsel, on the court’s own motion or at the request of the  
17 prisoner, at any phase of State or Federal postconviction  
18 proceedings on the basis of the ineffectiveness or incom-  
19 petence of counsel in such proceedings.

20 **“§2257. Mandatory stay of execution; duration; limits**  
21 **on stays of execution; successive petitions**

22       “(a) Upon the entry in the appropriate State court  
23 of record of an order under section 2256(c), a warrant or  
24 order setting an execution date for a State prisoner shall  
25 be stayed upon application to any court that would have

1 *jurisdiction over any proceedings filed under section 2254.*  
2 *The application must recite that the State has invoked the*  
3 *postconviction review procedures of this chapter and that*  
4 *the scheduled execution is subject to stay.*

5       “(b) A stay of execution granted pursuant to subsection  
6 (a) shall expire if—

7               “(1) a State prisoner fails to file a habeas corpus  
8 petition under section 2254 within the time required  
9 in section 2258, or fails to make a timely application  
10 for court of appeals review following the denial of  
11 such a petition by a district court;

12               “(2) upon completion of district court and court  
13 of appeals review under section 2254 the petition for  
14 relief is denied and (A) the time for filing a petition  
15 for certiorari has expired and no petition has been  
16 filed; (B) a timely petition for certiorari was filed  
17 and the Supreme Court denied the petition; or (C) a  
18 timely petition for certiorari was filed and upon con-  
19 sideration of the case, the Supreme Court disposed of  
20 it in a manner that left the capital sentence undis-  
21 turbed; or

22               “(3) before a court of competent jurisdiction, in  
23 the presence of counsel and after having been advised  
24 of the consequences of his decision, a State prisoner

1        *under capital sentence waives the right to pursue ha-*  
2        *beas corpus review under section 2254.*

3        *“(c) If one of the conditions in subsection (b) has oc-*  
4        *curred, no Federal court thereafter shall have the authority*  
5        *to enter a stay of execution or grant relief in a capital case*  
6        *unless—*

7                *“(1) the basis for the stay and request for relief*  
8        *is a claim not previously presented in the State or*  
9        *Federal courts;*

10               *“(2) the failure to raise the claim is (A) the re-*  
11        *sult of State action in violation of the Constitution or*  
12        *laws of the United States; (B) the result of the Su-*  
13        *preme Court recognition of a new Federal right that*  
14        *is retroactively applicable; or (C) based on a factual*  
15        *predicate that could not have been discovered through*  
16        *the exercise of reasonable diligence in time to present*  
17        *the claim for State or Federal postconviction review;*  
18        *and*

19               *“(3) the facts underlying the claim would be suf-*  
20        *ficient to establish by clear and convincing evidence*  
21        *that but for constitutional error, no reasonable fact*  
22        *finder would have found the petitioner guilty of the*  
23        *underlying offense.*

24        *“(d) Notwithstanding any other provision of law, no*  
25        *Federal district court or appellate judge shall have the au-*

1 *thority to enter a stay of execution, issue injunctive relief,*  
2 *or grant any equitable or other relief in a capital case on*  
3 *any successive habeas petition unless the court first deter-*  
4 *mines the petition or other action does not constitute an*  
5 *abuse of the writ. This determination shall be made only*  
6 *by the district judge or appellate panel who adjudicated the*  
7 *merits of the original habeas petition (or to the district*  
8 *judge or appellate panel to which the case may have been*  
9 *subsequently assigned as a result of the unavailability of*  
10 *the original court or judges). In the Federal courts of ap-*  
11 *peal, a stay may issue pursuant to the terms of this provi-*  
12 *sion only when a majority of the original panel or majority*  
13 *of the active judges determines the petition does not con-*  
14 *stitute an abuse of the writ.*

15 ***“§ 2258. Filing of habeas corpus petition; time require-***  
16 ***ments; tolling rules***

17 *“Any petition for habeas corpus relief under section*  
18 *2254 must be filed in the appropriate district court within*  
19 *one hundred and eighty days from the filing in the appro-*  
20 *priate State court of record of an order under section*  
21 *2256(c). The time requirements established by this section*  
22 *shall be tolled—*

23 *“(1) from the date that a petition for certiorari*  
24 *is filed in the Supreme Court until the date of final*  
25 *disposition of the petition if a State prisoner files the*

1     *petition to secure review by the Supreme Court of the*  
2     *affirmance of a capital sentence on direct review by*  
3     *the court of last resort of the State or other final State*  
4     *court decision on direct review;*

5             *“(2) during any period in which a State pris-*  
6     *oner under capital sentence has a properly filed re-*  
7     *quest for postconviction review pending before a State*  
8     *court of competent jurisdiction; if all State filing*  
9     *rules are met in a timely manner, this period shall*  
10    *run continuously from the date that the State pris-*  
11    *oner initially files for postconviction review until*  
12    *final disposition of the case by the highest court of the*  
13    *State, but the time requirements established by this*  
14    *section are not tolled during the pendency of a peti-*  
15    *tion for certiorari before the Supreme Court except as*  
16    *provided in paragraph (1); and*

17            *“(3) during an additional period not to exceed*  
18    *sixty days, if (A) a motion for an extension of time*  
19    *is filed in the Federal district court that would have*  
20    *proper jurisdiction over the case upon the filing of a*  
21    *habeas corpus petition under section 2254; and (B) a*  
22    *showing of good cause is made for the failure to file*  
23    *the habeas corpus petition within the time period es-*  
24    *tablished by this section.*

1   **“§2259. Scope of Federal review; district court adju-**  
2                   **dications**

3           “(a) *Whenever a State prisoner under capital sentence*  
4 *files a petition for habeas corpus relief to which this chapter*  
5 *applies, the district court shall only consider a claim or*  
6 *claims that have been raised and decided on the merits in*  
7 *the State courts, unless the failure to raise the claim prop-*  
8 *erly is—*

9                   “(1) *the result of State action in violation of the*  
10       *Constitution or laws of the United States;*

11                   “(2) *the result of the Supreme Court recognition*  
12       *of a new Federal right that is retroactively applica-*  
13       *ble; or*

14                   “(3) *based on a factual predicate that could not*  
15       *have been discovered through the exercise of reasonable*  
16       *diligence in time to present the claim for State or*  
17       *Federal postconviction review.*

18           “(b) *Following review subject to the constraints set*  
19 *forth in subsection (a) and section 2254(d) of this title, the*  
20 *court shall rule on the claims properly before it.*

21   **“§2260. Certificate of probable cause inapplicable**

22           *“The requirement of a certificate of probable cause in*  
23 *order to appeal from the district court to the court of ap-*  
24 *peals does not apply to habeas corpus cases subject to the*  
25 *provisions of this chapter except when a second or successive*  
26 *petition is filed.*



1   **“§ 2261. Application to State unitary review procedure**

2           “(a) For purposes of this section, a ‘unitary review’  
3   procedure means a State procedure that authorizes a person  
4   under sentence of death to raise, in the course of direct re-  
5   view of the judgment, such claims as could be raised on  
6   collateral attack. The provisions of this chapter shall apply,  
7   as provided in this section, in relation to a State unitary  
8   review procedure if the State establishes by rule of its court  
9   of last resort or by statute a mechanism for the appoint-  
10   ment, compensation and payment of reasonable litigation  
11   expenses of competent counsel in the unitary review pro-  
12   ceedings, including expenses relating to the litigation of col-  
13   lateral claims in the proceedings. The rule of court or stat-  
14   ute must provide standards of competency for the appoint-  
15   ment of such counsel.

16           “(b) A unitary review procedure, to qualify under this  
17   section, must include an offer of counsel following trial for  
18   the purpose of representation on unitary review, and entry  
19   of an order, as provided in section 2256(c), concerning ap-  
20   pointment of counsel or waiver or denial of appointment  
21   of counsel for that purpose. No counsel appointed to rep-  
22   resent the prisoner in the unitary review proceedings shall  
23   have previously represented the prisoner at trial in the case  
24   for which the appointment is made unless the prisoner and  
25   counsel expressly request continued representation.

1       “(c) Sections 2257, 2258, 2259, 2260, and 2262 shall  
2     apply in relation to cases involving a sentence of death from  
3     any State having a unitary review procedure that qualifies  
4     under this section. References to State ‘post-conviction re-  
5     view’ and ‘direct review’ in those sections shall be under-  
6     stood as referring to unitary review under the State proce-  
7     dure. The references in sections 2257(a) and 2258 to ‘an  
8     order under section 2256(c)’ shall be understood as referring  
9     to the post-trial order under subsection (b) concerning rep-  
10    resentation in the unitary review proceedings, but if a tran-  
11    script of the trial proceedings is unavailable at the time  
12    of the filing of such an order in the appropriate State court,  
13    then the start of the one hundred and eighty day limitation  
14    period under section 2258 shall be deferred until a tran-  
15    script is made available to the prisoner or his counsel.

16    **“§ 2262. Limitation periods for determining petitions**

17       “(a)(1) A Federal district court shall determine such  
18     a petition or motion within 60 days of any argument heard  
19     on an evidentiary hearing, or where no evidentiary hearing  
20     is held, within 60 days of any final argument heard in  
21     the case.

22       “(2)(A) The court of appeals shall determine any ap-  
23     peal relating to such a petition or motion within 90 days  
24     after the filing of any reply brief or within 90 days after  
25     such reply brief would be due. For purposes of this provi-

1 sion, any reply brief shall be due within 14 days of the  
2 opposition brief.

3       “(B) The court of appeals shall decide any petition  
4 for rehearing and or request by an appropriate judge for  
5 rehearing en banc within 20 days of the filing of such a  
6 petition or request unless a responsive pleading is required  
7 in which case the court of appeals shall decide the applica-  
8 tion within 20 days of the filing of the responsive pleading.  
9 If en banc consideration is granted, the en banc court shall  
10 determine the appeal within 90 days of the decision to grant  
11 such consideration.

12       “(3) The time limitations contained in paragraphs (1)  
13 and (2) may be extended only once for 20 days, upon an  
14 express good cause finding by the court that the interests  
15 of justice warrant such a one-time extension. The specific  
16 grounds for the good cause finding shall be set forth in writ-  
17 ing in any extension order of the court.

18       “(b) The time limitations under subsection (a) shall  
19 apply to an initial petition or motion, and to any second  
20 or successive petition or motion. The same limitations shall  
21 also apply to the re-determination of a petition or motion  
22 or related appeal following a remand by the court of ap-  
23 peals or the Supreme Court for further proceedings, and in  
24 such a case the limitation period shall run from the date  
25 of the remand.

1       “(c) The time limitations under this section shall not  
2 be construed to entitle a petitioner or movant to a stay of  
3 execution, to which the petitioner or movant would other-  
4 wise not be entitled, for the purpose of litigating any peti-  
5 tion, motion, or appeal.

6       “(d) The failure of a court to meet or comply with  
7 the time limitations under this section shall not be a ground  
8 for granting relief from a judgment of conviction or sen-  
9 tence. The State or Government may enforce the time limi-  
10 tations under this section by applying to the court of ap-  
11 peals or the Supreme Court for a writ of mandamus.

12       “(e) The Administrative Office of United States Courts  
13 shall report annually to Congress on the compliance by the  
14 courts with the time limits established in this section.

15       “(f) The adjudication of any petition under section  
16 2254 of this title that is subject to this chapter, and the  
17 adjudication of any motion under section 2255 of this title  
18 by a person under sentence of death, shall be given priority  
19 by the district court and by the court of appeals over all  
20 noncapital matters.

21       **“§ 2263. Rule of construction**

22       “‘This chapter shall be construed to promote the expedi-  
23 tious conduct and conclusion of State and Federal court  
24 review in capital cases.’”.

5 ***Subtitle C—Funding for Litigation***  
6 ***of Federal Habeas Corpus Peti-***  
7 ***tions in Capital Cases***

9           (a) *IN GENERAL.*—Part E of title I of the Omnibus  
10 *Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711*  
11 *et seq.) is amended by adding at the end the following new*  
12 *section:*

15       “SEC. 523. Notwithstanding any other provision of  
16       this subpart, the Director shall provide grants to the States,  
17       from the funding allocated pursuant to section 511, for the  
18       purpose of supporting litigation pertaining to Federal ha-  
19       beas corpus petitions in capital cases. The total funding  
20       available for such grants within any fiscal year shall be  
21       equal to the funding provided to capital resource centers,  
22       pursuant to Federal appropriation, in the same fiscal  
23       year.”.

•HR 729 RH

1 *Safe Streets Act of 1968 is amended by inserting after the*  
 2 *item relating to section 522 the following new item:*

*“Sec. 523. Funding for litigation of Federal habeas corpus petitions in capital cases.”.*

3           ***TITLE II—FEDERAL DEATH***  
 4           ***PENALTY PROCEDURES REFORM***

5           ***SEC. 201. FEDERAL DEATH PENALTY PROCEDURES RE-***  
 6                                   ***FORM.***

7           (a) *IN GENERAL.*—Subsection (e) of section 3593 of  
 8 *title 18, United States Code, is amended by striking “shall*  
 9 *consider” and all that follows through the end of such sub-*  
 10 *section and inserting the following: “shall then consider*  
 11 *whether the aggravating factor or factors found to exist out-*  
 12 *weigh any mitigating factors. The jury, or if there is no*  
 13 *jury, the court shall recommend a sentence of death if it*  
 14 *unanimously finds at least one aggravating factor and no*  
 15 *mitigating factor or if it finds one or more aggravating*  
 16 *factors which outweigh any mitigating factors. In any other*  
 17 *case, it shall not recommend a sentence of death. The jury*  
 18 *shall be instructed that it must avoid any influence of sym-*  
 19 *pathy, sentiment, passion, prejudice, or other arbitrary fac-*  
 20 *tors in its decision, and should make such a recommenda-*  
 21 *tion as the information warrants. The jury shall be in-*  
 22 *structed that its recommendation concerning a sentence of*  
 23 *death is to be based on the aggravating factor or factors*  
 24 *and any mitigating factors which have been found, but that*

1 *the final decision concerning the balance of aggravating and*  
2 *mitigating factors is a matter for the jury's judgment."*

3 (b) *CONFORMING AMENDMENT.*—Section 3594 of title  
4 18, United States Code, is amended by striking “or life im-  
5 prisonment without possibility of release”.

HR 729 RH—2

HR 729 RH—3